

**SHOPPING CENTER LEASE**

*between*

**GFS REALTY, INC., as landlord**

*and*

Montgomery County, Maryland

\_\_\_\_\_, **as tenant**

*at*

DIAMOND SQUARE

\_\_\_\_\_, **SHOPPING CENTER**

# SHOPPING CENTER LEASE

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## SHOPPING CENTER LEASE

DATE:

10/23, 2001

LANDLORD:

GFS Realty, Inc. (Dept. #671)  
P.O. Box 1804  
Washington, D.C. 20013

TENANT:

Montgomery County, Maryland  
T/A Montgomery County Liquor  
16650 Crabbs Branch Way  
Rockville, Maryland 20855

CENTER:

Diamond Square Shopping Center  
18 Bureau Drive  
Gaithersburg, Maryland 20878  
(Shown on Exhibit A)

PREMISES:

Store numbers B-7 & B-8 in the Center, with an address at  
18 Bureau Drive containing 3,200 +/- sq  
ft (measured from the center of interior demising walls and from  
the outside of exterior walls) (Shown crosshatched on Exhibit A)

In consideration of the agreements in this Lease, Landlord and Tenant agree  
as follows:

### §1. DEFINITIONS AND EXHIBITS

§1.1. Definitions - Certain defined terms in this Lease are presented  
below:

*a. Common Areas*

All areas and facilities in or near the Center provided  
by Landlord for common use by the Center's tenants  
and their customers or used by Landlord for the  
Center, including parking areas, loading docks, delivery  
areas, sidewalks, canopies, equipment rooms, courts,  
landscaped areas, retaining walls, utility facilities,  
storm water management facilities, stairways, bus stops,  
lighting facilities, shopping center identification and  
directional signage, and any other areas and  
improvements provided by Landlord from time to time  
for common use by the Center's tenants and their  
customers; however, except as expressly included above,  
Common Areas exclude the structural supports, walls,  
floor slab, and roof of all buildings in the Center

*b. Lease Commencement  
Date*

The date filled in at the top of this page

*c. Possession Date*

The date Landlord delivers possession of the Premises  
to Tenant (estimated to be October 1,  
2001)

*d. Rent Commencement  
Date*

The date Tenant opens for business or the 60th  
day after the Possession Date, whichever is earlier  
(except that if Tenant is delayed in doing Tenant's  
Work for a reason beyond its control (such as a strike,  
lockout, labor trouble, labor, material, or equipment  
shortage, governmental or quasi-govern-mental law or  
regulation, power failure, adverse weather, fire, riot,  
insurrection, or war, but not financial inability) and  
Tenant notifies Landlord within 3 days after the start  
of the delay, the Rent Commencement Date is delayed  
for the length of Tenant's delay)

**e. Lease Term.**

Starts on the Lease Commencement Date and ends five (5) years after the first day of the first full month following the Rent Commencement Date (may be extended if provided in this Lease)

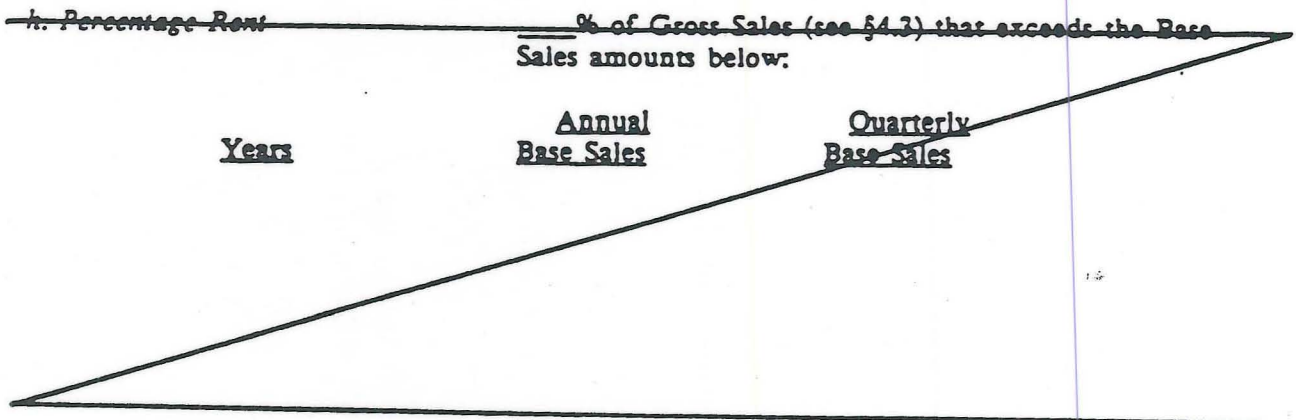
**f. Options to Extend**

one at 5 years ~~each~~

**g. Minimum Rent**

<u>Years</u>	<u>Minimum Annual Rent</u>	<u>Monthly Installment</u>
1 - 2	\$ 51,200.04	\$ 4,266.67
3 - 4	\$ 53,600.04	\$ 4,466.67
5	\$ 56,000.04	\$ 4,666.67
<u>Option Period (if applicable)</u>		
6	\$ 56,000.04	\$ 4,666.67
7 - 8	\$ 58,400.04	\$ 4,866.67
9 - 10	\$ 60,800.04	\$ 5,066.67

\* See page 2-a



**i. Tenant's Business**

The sale at retail of alcoholic beverages (beer, wine and liquor) for off-premises consumption and as ancillary thereto, the sale of products related to the consumption of alcoholic beverage products,  
**and for no other use or purpose.**

**j. Tenant's Trade Name**

Montgomery County Liquor  
**and no other name.**

**k. Security Deposit**

\$ N/A

**l. Pro-rata Share**

**The share of CAM costs (see §5.3) and RET (see §4.4) Tenant must pay to Landlord under this Lease, which share is a fraction with a numerator equal to the gross**

LEASE AGREEMENT between GFS Realty, Inc., as Landlord AND Montgomery County, Maryland, t/a Montgomery County Liquor, as Tenant in Diamond Square Shopping Center

- \* **Rent Abatement.** Provided Tenant is then open for business, Minimum Rent only shall abate for a period commencing on the Rent Commencement Date and expiring on the later of sixty (60) days after the Rent Commencement Date or one hundred twenty (120) days after the Possession Date. All additional rent due under the Lease, including, but not limited to, Tenant's pro rata share of CAM costs, RET, insurance and Promotional Fund dues shall be payable in accordance with the Lease.



leasable area of the Premises and a denominator either equal to (i) the total gross leasable area in the Center (for gross CAM costs and RET charged to all tenants in the Center using the same formula), or (ii) the total gross leasable area in the Center less the gross leasable area in buildings other than the building in which the Premises are located (for net CAM costs and RET (after deducting CAM costs and RET attributable to the other buildings) charged to the tenants in the building in which the Premises are located), both of which denominators change as the total gross leasable area in the Center changes

**§1.2. Exhibits** - The exhibits to this Lease are listed below and are made a part of this Lease as if they were set forth in full in this Lease:

Exhibit A	Site Plan of Center
<del>Exhibit B</del>	<del>Landlord's Work</del>
Exhibit C	Rules and Regulations
Exhibit D	Sign Criteria
Exhibit E	Declaration of Occupancy
<del>Exhibit F</del>	<del>Form of Corporate Resolutions and Attorney's Opinion</del>

Notwithstanding anything to the contrary in this Lease, Landlord may design and decorate any part of the Center as it desires and may change the size and dimensions of any part of the Center, including the number, location and dimensions of buildings and stores, dimensions of hallways, malls and corridors, the number of floors in any building, the location, size and number of tenant spaces and kiosks that may be erected in any part of the Center, the identity, type and location of other stores and tenants, and the size, shape, location, areas, facilities, and arrangement of Common Areas.

## §2. PREMISES AND TERM

**§2.1. Premises** - Landlord, as the land owner, ground lessee, or the owner's or ground lessee's agent, as applicable, leases the Premises to Tenant and Tenant rents them from Landlord. As long as Tenant performs its obligations under this Lease, Tenant may peaceably and quietly hold and enjoy the Premises for the Lease Term without interruption by Landlord. ~~Landlord shall construct the Premises in substantial accordance with plans and specifications listed in Exhibit B ("Landlord's Work").~~ Landlord may use the roof and the side and rear walls of the Premises for any purpose, including erecting signs or other structures on or over the Premises, and leading ducts, conduits and wires that serve other parts of the Center through, to or from the Premises in locations that do not materially interfere with Tenant's use of the Premises. Tenant may not use the exterior of exterior walls or the roof of the Premises or any part of the Center outside the Premises, except as provided in §5.1.

**§2.2. Term; Lease Year** - This Lease commences on the Lease Commencement Date and expires on the last day of the Lease Term described in §1.1(e). A "Lease Year" is a 12 month period during the Lease Term that begins January 1 and ends December 31. The periods from (a) the Rent Commencement Date through the first December 31 of the Lease Term and (b) the last January 1 of the Lease Term through the end of the Lease Term are partial Lease Years. All amounts due under this Lease during partial Lease Years are prorated (with all months considered as having 30 days).

**§2.3. Option Term** - If provided in §1.1(f), and subject to the conditions of this §2.3, Tenant may extend the Lease Term the number of times as provided in §1.1(f), each time for the number of years as provided in §1.1(f). Tenant may not exercise an Option to Extend if Tenant is in default under this Lease at the time of exercise. In addition, Tenant's exercise of an Option to Extend is void if (a) Tenant is in default under this Lease at any time during the 2 years before the extension term is to commence; or (b) Gross Sales for any of the 4

Tenant has examined the Premises and accepts same "AS IS" without representation or warranty by Landlord as to condition, except: Landlord warrants that all mechanical equipment which serves the Premises shall be in good working order upon the Possession Date.



~~quarterly periods before the extension term is to commence have not exceeded the Quarterly Base Sales for those periods.~~ To exercise an Option to Extend, Tenant shall send irrevocable, unconditional notice of exercise to Landlord at least 180 days before the then current term expires. Each extension term begins on the expiration of the prior term. If the Lease Term is extended, the Lease continues on the same terms as in this Lease, but Tenant then has 1 fewer Option to Extend. An Option to Extend may not be exercised more than 3 years before its extension term would commence.

§2.4. Holding Over - If Tenant holds over after the termination of the Lease Term, Tenant is a tenant at sufferance, shall pay double per diem rent for each day it holds over, and is liable to Landlord for all losses, claims and expenses connected with Tenant's holding over, including claims made by any succeeding tenant.

\* See page 4-a

### §3. TENANT'S WORK

Upon execution of this Lease, or sooner

§3.1. Tenant's Plans - ~~As soon as reasonably possible after the Lease Commencement Date, Landlord shall send Tenant a drawing of the Premises. Within 30 days after Tenant receives the drawing,~~ Tenant shall submit to Landlord 4 complete sets of plans and specifications ("Tenant's Plans") of all Work that Tenant plans to do in the Premises, ~~prepared in conformity with Exhibit B.~~ Tenant's Plans must include sealed architectural, mechanical, and electrical drawings if they are required by governmental authorities. As soon as reasonably possible after Tenant submits Tenant's Plans, Landlord shall notify Tenant if Tenant's Plans fail to conform with Exhibit B or otherwise to meet with Landlord's approval. Within 10 days after it receives any such notice, Tenant shall revise Tenant's Plans to the extent necessary to obtain Landlord's approval and shall resubmit them for Landlord's approval. When Landlord approves Tenant's Plans, Landlord shall initial and return 1 set to Tenant, and the approved version becomes a part of this Lease as if contained in full in this Lease.

§3.2. Tenant's Work - "Tenant's Work" is all work ~~(except Landlord's Work)~~ necessary before Tenant can operate Tenant's Business in the Premises, including all work shown in Tenant's Plans. Tenant shall not commence Tenant's Work until the Possession Date (see §3.3), or the date Landlord approves Tenant's Plans, whichever is later. (But see §3.3 re: plan approval delays caused by Landlord.) ~~Tenant shall commence Tenant's Work even though Landlord may not have completed Landlord's Work on the Possession Date and may be in the Premises concurrently with Tenant.~~ Tenant shall do Tenant's Work diligently and in strict accordance with Tenant's Plans, using only new or completely reconditioned fixtures. Tenant shall complete Tenant's Work by the Rent Commencement Date.

§3.3. Possession Date - Landlord shall notify Tenant of the Possession Date at least 30 days in advance. If Landlord does not deliver possession of the Premises on the date estimated in §1.1(c) for any reason, or if Landlord has not approved Tenant's Plans by the date estimated in §1.1(c) because of delays caused by Landlord, the Possession Date is delayed until the later of Landlord's delivery of possession or Landlord's approval of Tenant's Plans. If the Possession Date is delayed longer than 2 years beyond the estimated Possession Date in §1.1(c), then either party may terminate this Lease by notifying the other in writing after the 2-year period. However, if Tenant gives such a notice, this Lease terminates only if Landlord does not deliver possession of the Premises as required by this Lease within 60 days after Tenant's notice. If neither party notifies the other and unless Landlord sooner delivers possession of the Premises, this Lease terminates 4 years after the estimated Possession Date in §1.1(c). In no event is Landlord, its agents, employees, or contractors liable to Tenant, nor may Tenant terminate this Lease other than as provided in this §3.3, if the Possession Date is delayed. If the Possession Date is delayed, Landlord may either leave the end of the Lease Term unchanged or shorten it by the same period that the Possession Date was delayed.

§3.4. Permits - Tenant shall obtain any building permits and other governmental approvals necessary to do Tenant's Work and to operate Tenant's Business in the Premises. Tenant shall apply for the permits and approvals within 3 days after Landlord approves Tenant's Plans. Tenant's failure to obtain

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- \* Notwithstanding the foregoing, in the event that the parties hereto are negotiating in good faith to extend the Lease Term, such monthly Minimum Rent shall equal the monthly Minimum Rent then payable hereunder. Such negotiations may be terminated by either party hereto upon seven (7) days prior written notice, in which event Tenant shall be provided with thirty (30) days notice to vacate the Premises and Minimum Rent for such thirty (30) day period shall equal the monthly Minimum Rent then payable hereunder.



such permits and approvals does not affect this Lease, including the Possession Date and the Rent Commencement Date.

~~§3.5. Tenant's Failure to Open - Tenant recognizes that if it fails to open when required under §8, Landlord's damages (including lost Percentage Rent and lost opportunity to sell, lease, mortgage, or otherwise deal with the Center) will be difficult, if not impossible, to ascertain. Tenant also recognizes that if it fails to do anything it is required by this Lease to do on or before the Rent Commencement Date, Tenant threatens Landlord with a greatly increased likelihood that Tenant will not open when required under §8. Accordingly, if Tenant fails to do anything it is required by this Lease to do on or before the Rent Commencement Date (including submitting Tenant's Plans, revising Tenant's Plans, and starting, diligently doing, and completing Tenant's Work), Landlord may without notice or demand: (a) complete Landlord's Work, and, at Tenant's expense, make any changes required because of Tenant's delay or failure to perform its obligations under this Lease, using any contractor selected by Landlord; (b) do any of Tenant's Work or perform any other obligations of Tenant under this Lease, at Tenant's expense, including preparing Tenant's Plans and doing Tenant's Work; and (c) terminate this Lease and recover, as liquidated damages and not as a penalty, a sum equal to the Monthly Installments of Minimum Annual Rent due for the 12 months after the Rent Commencement Date, plus the expenses incurred by Landlord pursuant to (a) and (b) above.~~

§3.6. Declaration of Occupancy - After the Rent Commencement Date, Landlord and Tenant shall sign a Declaration of Occupancy in the form of Exhibit E, that sets forth the Possession Date, the Rent Commencement Date, and the date the Lease Term expires.

#### §4. RENT

§4.1. Minimum ~~and Percentage~~ Rent - Commencing on the Rent Commencement Date, Tenant shall pay to Landlord at its address on page 1 (as that address may be changed by notice from Landlord):

(i) Minimum Annual Rent as set forth in §1.1(g), payable in Monthly Installments as shown, in advance, on the first day of each month. If the Rent Commencement Date does not occur on the first day of a month, Tenant shall pay a prorated Monthly Installment on the Rent Commencement Date for the period from the Rent Commencement Date to the first day of the next calendar month.

~~(ii) Percentage Rent as set forth in §1.1(h), payable each April 15, July 15, October 15, and January 15 for the quarterly period just ended. Quarterly periods end on the last day of March, June, September, and December. For quarterly periods of less than three full months, Quarterly Base Sales are proportionately reduced. If the sum of Tenant's quarterly percentage rent payments during a Lease Year exceeds Percentage Rent based on the Annual Base Sales, Landlord shall refund the excess to Tenant by each February 28.~~

In years during which the Minimum Annual Rent ~~or the Annual Base Sales~~ changes, the change takes effect on the first day of the first month after the anniversary of the Rent Commencement Date that year (unless the Rent Commencement Date occurs on the first day of a month, in which event the change takes effect on the anniversary of the Rent Commencement Date).

~~§4.2. Gross Sales Statements - By each April 15, July 15, October 15, and January 15, Tenant shall deliver to Landlord its written Gross Sales report for the most recent quarter, that Tenant shall certify is correct. By each January 30, Tenant shall deliver to Landlord a written Gross Sales report for the most recent Lease Year that a reputable, independent certified public accountant or accountant practitioner states is fair and accurate based on their examination of Tenant's Records (see below).~~

"Tenant's Records" are all original books and records regarding Gross Sales, including sales journals, worksheets, cash register tapes, sales slips, bank statements, deposit slips, sales tax returns, and any other information needed to determine or to verify Gross Sales. Tenant shall keep Tenant's Records in accordance with generally accepted accounting principles consistently applied, and



~~shall keep Tenant's Records for the most recent 12 quarters at Tenant's Notice Address (see §17.9) (and at the Premises during the Lease Term if the Notice Address is more than 100 miles from Washington, D.C.).~~

~~Landlord or its agents may examine and audit Tenant's Records at Tenant's Notice Address (see §17.9) (or at the Premises if the Notice Address is more than 100 miles from Washington, D.C.). If the examination or audit discloses a deficiency in Percentage Rent payments, Tenant shall pay it within 5 days after notice of the deficiency. If the deficiency is 1% or more of the Percentage Rent paid by Tenant for the period, Tenant also shall pay Landlord the cost of the audit or examination. If the deficiency is 3% or more of the Percentage Rent due for the period of the deficiency, Landlord may terminate this Lease.~~

If Tenant fails to furnish its Gross Sales report for any period, Landlord may charge a \$100.00 late fee to cover additional administrative expenses. In addition, Landlord may examine Tenant's Records at Tenant's expense to compute Gross Sales and Percentage Rent due for that period, or may require Tenant to pay Percentage Rent using as Gross Sales for that period 125% of the greater of (a) the Base Sales for that period, or (b) Gross Sales for the corresponding period in the prior Lease Year. Landlord's exercise of any remedy in this paragraph does not relieve Tenant of the obligation to submit the required Gross Sales reports and to pay the Percentage Rent due based on those sales (with credit for any amounts paid under this paragraph).

If Tenant submits a delinquent Gross Sales report, Landlord may not honor it unless (i) a reputable, independent certified public accountant or accountant practitioner states it is fair and accurate based on their examination of Tenant's Records; and (ii) Percentage Rent due under the prior paragraph has been paid. If the accountant's statement reflects that Tenant has paid excess Percentage Rent, Landlord shall apply the excess against any Percentage Rent due for past periods, or for future periods as it becomes due (or shall refund the excess to Tenant if the Lease Term has terminated and Tenant has paid all amounts it owes to Landlord).

~~§4.3. Gross Sales "Gross Sales" are the price of all goods sold and rented and of services performed at or from the Premises for cash, credit, exchange or otherwise, including (i) goods sold and rented and services performed outside the Premises if the orders are handled at the Premises or are connected with actions in or from the Premises; and (ii) goods sold and rented and services performed at or from the Premises if the orders are handled outside the Premises; whether the orders are taken in person, or by mail, telephone, or otherwise.~~

Tenant may deduct from Gross Sales:

- (a) exchanges of merchandise between Tenant's stores and deliveries from the Premises to fill orders that do not originate at or from the Premises, but only if such exchanges and deliveries are made solely for the convenient operation of Tenant's Business and not to avoid consummating a sale in, at or from the Premises;
- (b) returns to manufacturers;
- (c) refunds to customers;
- (d) sales of fixtures, machinery, and equipment not in the ordinary course of Tenant's business; and
- (e) sales, excise, and other taxes imposed by governmental authority and collected from Tenant's customers and paid to the authority by Tenant.

Tenant may not deduct from Gross Sales any other items, including:

- (A) taxes, except as provided in this Lease;
- (B) returned checks and reserves and deductions for uncollected amounts;
- (C) register shortages; and
- ~~(D) deposits not refunded to customers.~~



**§4.4. Real Estate Taxes** - Subject to reimbursement as set forth in this section, Landlord shall pay the real estate taxes ("RET") on the Center. RET includes all real estate taxes, charges and assessments by governmental and quasi-governmental authorities (including community and homeowners' associations), front-foot benefit charges, special assessments, sewer and other taxes and charges, all other amounts listed on the tax bill for the Center (such as water and sewer service, school and fire district taxes, fire line charges, and capital facilities charges), substitutions or partial substitutions for or additions to RET, rents taxes or other tax or charge (other than income tax) imposed on account of the payment by Tenant or receipt by Landlord of, or based in whole or in part on, the rents in this Lease, or the value of those rents or on Landlord's interest in the Center, and all costs and fees incurred by Landlord to contest or negotiate the RET with public authorities. RET excludes taxes on Tenant's machinery, equipment, inventory or other personal property or assets (which taxes Tenant shall pay directly to the taxing authority).

Tenant shall pay to Landlord its Pro-rata Share of RET within 30 days after notice from Landlord of the amount Tenant owes (with proportionate reduction for periods at the beginning and end of the Lease Term that are not full fiscal tax years of the taxing authority).

Landlord may require Tenant to pay its Pro-rata Share of RET in monthly installments in advance on the 1st day of each month, in amounts estimated periodically by Landlord. After the last tax payment to the taxing authority each year, Landlord shall compute Tenant's share of annual RET. Landlord shall credit any excess to amounts to be paid during the following year (or shall refund the excess to Tenant if the Lease Term has terminated and Tenant has paid all amounts it owes to Landlord), or Tenant shall pay any deficiency to Landlord, as the case may be.

~~§4.5. Security Deposit - On the Lease Commencement Date, Tenant shall~~ pay the Security Deposit to Landlord, and Landlord shall hold it as security for Tenant's performance under this Lease. Landlord may hold the Security Deposit without liability for interest, unless required by law, and may deposit the Security Deposit in an account containing other security deposits and other moneys controlled by Landlord or its affiliates. If Tenant defaults under this Lease, Landlord may apply all or any part of the Security Deposit to compensate Landlord for its loss, cost, damage or expense connected with the default, and at Landlord's request, Tenant shall pay to Landlord within 5 days the amount necessary to restore the Security Deposit to the original amount. Unless Tenant is in default at the end of the Lease Term, Landlord shall return the balance of the Security Deposit to Tenant after the end of the Lease Term, within 30 days after Tenant's request.

Promotional Fund

**§4.6. Additional Rent; Late Payment** - All amounts that Tenant is required to pay under this Lease, including RET (see §4.4), insurance, CAM Costs (see §5.2), ~~merchants' association~~ dues, advertising fees, and expenses to cure Tenant's default, are additional rent payable with the next Monthly Installment of Minimum Annual Rent that becomes due (or at the end of the Lease Term, if sooner), except as otherwise provided in this Lease. Tenant's failure to pay any of these amounts constitutes its failure to pay rent, and they may be collected as provided by law for the collection of rent. Tenant shall pay all rent without prior notice or demand. Tenant's agreements to pay rent and other amounts under this Lease are independent covenants, and, except as this Lease provides otherwise, Tenant may not setoff, abate, deduct or fail to pay any such amounts for any reason. Any rent or additional rent to be paid by Tenant that is not paid when due bears interest at the lesser of: (a) the rate charged by large U.S. money center commercial banks, from time to time, as published in the Wall Street Journal (or as fixed in Landlord's reasonable opinion if the Wall Street Journal ceases publishing that rate); or (b) the maximum rate allowed by law. In addition, for each late payment of rent or additional rent, Tenant shall pay a late payment processing charge of \$50.00 if the payment is received by Landlord less than 10 days after it is due, or \$150.00 if the payment is received 10 days or more after it is due; and Tenant shall also pay a notice processing fee of \$150.00 if Tenant's payment is received by Landlord after Landlord has sent Tenant notice of that failure to make timely payment.

\* See page 7-a

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- \* Notwithstanding the foregoing, Landlord agrees to waive the late payment processing charge for the first two (2) instances in any twelve (12) month period during the Lease Term, provided payment is received by Landlord within fifteen (15) days after the due date.



## §5. COMMON AREAS AND CAM COSTS

§5.1. Use of Common Areas - Landlord retains exclusive control and management of the Common Areas, and Landlord may establish reasonable rules and regulations for the Common Areas, which Landlord may amend. Landlord may change the level or grade of parking surfaces any may build subsurface or elevated parking areas; may charge for parking (by meters or otherwise) may close any Common Areas temporarily to make repairs or changes, to prevent the acquisition of public rights, to discourage noncustomer parking, or for any other purposes; and may do other things in the Common Areas as Landlord in its sole discretion deems advisable.

, provided, however, any amounts collected by Landlord for parking shall be applied to offset CAM Costs hereunder);

reasonable

Tenant, its employees and customers may use the Common Areas in common with Landlord and all others entitled to use the Common Areas, subject to the prior paragraph. Tenant may not interfere with any person's use of the Common Areas. Tenant shall abide by the rules and regulations in Exhibit C (as amended) and shall cause its concessionaires, employees, agents, and customers to abide by them.

If Landlord designates an area for parking by Tenant's employees, Tenant shall cause its employees to park there and shall pay Landlord \$10.00 for each day that Tenant or its employee parks a car in the Center outside that area. Tenant authorizes Landlord to tow any such car from the Center. Tenant shall reimburse Landlord for the towing costs and shall otherwise indemnify Landlord against any loss, claim, or expense connected with the towing or the improperly parked car. At Landlord's request, Tenant shall furnish Landlord license numbers and descriptions of cars used by Tenant and its concessionaires, employees, and agents.

However, Landlord shall not tow any such car nor shall Tenant pay such \$10.00 per day amount until the third and subsequent failure(s) by Tenant's employees to park in designated areas.

§5.2. Maintenance of Common Areas - Landlord shall maintain, repair and replace (when necessary) the Common Areas at the level deemed advisable by Landlord, in its sole discretion. However, if the need for maintenance, repair, or replacement is connected with the negligence of Tenant, its employees, agents, contractors; or with Tenant's failure to do anything it is required to do under this Lease, or its doing anything it is not permitted to do under this Lease (whether or not the failure or the doing has continued long enough to constitute a default); or with vandalism, malicious mischief, or actual or attempted robbery, burglary, or safe burglary, against which Tenant is required to insure, Landlord either may require Tenant to pay the cost of the maintenance, repair, or replacement, or may require Tenant to do the maintenance or make the repair or replacement. If Landlord notifies Tenant that Tenant must do the maintenance or make the repair or replacement, Tenant shall submit its plans or procedures for the maintenance, repair, or replacement to Landlord for its approval within 5 days after Landlord's notice and shall do the maintenance or make the repair or replacement as soon as reasonably practicable after Landlord approves Tenant's plans or procedures. In addition, Tenant shall promptly remove ice and snow from Tenant's loading area and from the sidewalk in front of the Premises and shall collect refuse outside the Premises as required in §8.4.

§5.3. CAM Costs - "CAM Costs" are all of Landlord's costs to operate the Center and to and maintain, repair and replace (when necessary) the Common Areas, including: (a) costs (and appropriate reserves) to operate, police, protect, inspect, manage, and light (including maintaining and illuminating signs) the Center; (b) costs (and appropriate reserves) to clean, sweep, remove snow and ice from, remove trash from, resurface, paint, restripe, landscape, renovate, remodel, repair, and replace the Common Areas and any machinery and equipment used to do these things; (c) costs to provide liability, property, and other insurance coverage for the Center; (d) costs for special services for the Center, such as for music program services and loud speaker systems (including ASCAP and BMI union fees) and for security measures; (e) water and sewer charges, energy surcharges, wages, unemployment taxes, social security taxes, workman's compensation insurance and other benefits payable to employees of Landlord or its affiliates at the Center; and (f) assessments attributable to the Common Areas (unless charged to Tenant under §4.4), personal property taxes, fees for required licenses and permits, supplies, and salaries and other compensation of personnel to do the things listed in this section; plus 15% of the total of all of the foregoing costs and expenses to cover Landlord's administrative costs, which 15% administrative fee includes a management fee.

holiday and seasonal decorations; sprinkler monitoring systems;



§5.4. Tenant's Share of CAM Costs - Tenant shall pay its Pro-rata Share of CAM Costs for a Lease Year in monthly installments, in amounts estimated by Landlord, on the first day of each month of that Lease Year. After each Lease Year, Landlord shall notify Tenant of its share of CAM Costs for that year (with proportionate reduction for periods at the beginning and end of the Lease Term that are not full Lease Years). Landlord shall credit any excess to amounts to be paid by Tenant for the following year (or shall refund the excess to Tenant if the Lease Term has terminated and Tenant has paid all amounts it owes to Landlord), or Tenant shall pay any deficiency to Landlord, as the case may be.

§5.5. Trash Pickup - If Landlord provides trash pickup service for the Center, Tenant shall use the service and shall pay its share of the costs of the service. Tenant's share of trash pickup costs is the same percentage as the percentage use by Tenant of the trash pickup service, as determined by Landlord in its reasonable opinion, based on amount and type of trash, frequency of pickup, and other relevant factors. Tenant shall pay its share of trash pickup costs in installments payable not more frequently than monthly, with annual adjustment if estimates were used to fix Tenant's installments and if those estimates differ from amounts. Landlord shall credit any excess to amounts to be paid by Tenant for the following year (or shall refund the excess to Tenant if the Lease Term has terminated and Tenant has paid all amounts it owes to Landlord), or Tenant shall pay any deficiency to Landlord, as the case may be.

## §6. MAINTENANCE OF PREMISES

§6.1. Maintenance by Landlord - Except as provided by §13 (re: casualty) and §14 (re: condemnation), Landlord shall maintain, repair and replace (when necessary) the structural supports, interior demising walls, exterior walls, floor slab, and roof of the Premises to keep them in good, safe, and clean condition. However, if the need for maintenance, repair, or replacement is connected with the negligence of Tenant, its employees, agents, contractors; or with Tenant's failure to do anything it is required to do under this Lease, or its doing anything it is not permitted to do under this Lease (whether or not the failure or the doing has continued long enough to constitute a default); or with vandalism, malicious mischief, or actual or attempted robbery, burglary, or safe burglary, against which Tenant is required to insure, Landlord either may require Tenant to pay the cost of the maintenance, repair, or replacement, or may require Tenant to do the maintenance or make the repair or replacement. If Landlord notifies Tenant that Tenant must do the maintenance or make the repair or replacement, Tenant shall submit its plans or procedures for the maintenance, repair, or replacement to Landlord for its approval within 5 days after Landlord's notice and shall do the maintenance or make the repair or replacement as soon as reasonably practicable after Landlord approves Tenant's plans or procedures. Landlord is not obligated to do any other maintenance or to make any other repairs, replacements or improvements to the Premises or to any equipment or fixtures in the Premises.

§6.2. Maintenance by Tenant - Except as provided by §§13 and 14 (dealing with damage by casualty and with condemnation), except for reasonable wear and tear, and except as provided by §6.1 (dealing with Landlord's maintenance obligation), Tenant shall maintain, repair and replace (when necessary) the Premises (including the HVA/C system and other utility systems, interior non-demising walls, vestibules, windows, window frames and moldings, plate glass, doors, and door openers and fixtures) and any facilities outside the Premises that serve the Premises (such as Tenant's sign and sign box and the HVA/C fan and compressor) to keep them in good, safe, and clean condition. Tenant shall replace parts of or the entire HVA/C system when, in the judgment of an independent mechanical engineer, replacement (not repair) makes economic sense.

§6.3. Surrender of Premises - When this Lease terminates, Tenant shall surrender the Premises in the same condition they were in on the Rent Commencement Date, except as provided in §6.2. Tenant also shall deliver to Landlord at its Notice Address (see §17.9) all keys for the Premises and all combinations for locks, safes and vaults in the Premises.

Landlord agrees to provide Tenant with any warranties in Landlord's possession which are applicable to Tenant's maintenance requirements pursuant to this Section 6.2.

(reasonable wear and tear excepted)



## §7. UTILITIES

§7.1. Payment - After the Possession Date, Tenant shall pay promptly all charges for sewer, gas, electricity, water and all other utility services for the Premises, whether supplied by Landlord or by a public utility.

§7.2. Service - ~~Tenant shall change all HVA/C filters at least once a month. Tenant shall contract with a reputable HVA/C firm approved by Landlord to inspect and service the HVA/C system. At least twice each Lease Year, Tenant shall have the HVA/C system inspected by the firm and shall obtain from the firm a written inspection report. Tenant shall keep the service contract and the report at the Premises and shall furnish copies to Landlord on request.~~

Tenant shall contract with its own HVA/C mechanics to properly maintain the HVA/C system serving the Premises.

§7.3. Arrangement and Supply - If Tenant purchases utility service from the utility company, then before the Possession Date, Tenant shall arrange with the utility company serving the Premises to provide utility service in Tenant's name and to bill Tenant directly, and Tenant shall pay any deposits required. Tenant's obligations under this Lease are not affected by any failure or delay in utility supply, installation, or repair service.

§7.4. Landlord's Right to Discontinue Utilities - If Tenant defaults under this Lease, Landlord may discontinue any utility and services that Landlord supplies to Tenant, without notice or liability to Tenant, including water, gas, electricity, sewer, heating, and air-conditioning.

## §8. CONDUCT OF BUSINESS BY TENANT

§8.1. Use; Trade Name - Tenant shall use the Premises to conduct only Tenant's Business (see 1.1(i)). Tenant shall not use more than ~~45%~~ 25% of the floor area of the Premises for storage and office space, and Tenant shall use the storage and office space solely for Tenant's Business. Tenant shall operate its business only under Tenant's Name (see 1.1(j)).

§8.2. Opening and Continuous Use - Tenant shall open Tenant's Business in the Premises with the public on the Rent Commencement Date. After the Rent Commencement Date, Tenant shall continuously operate Tenant's Business under Tenant's Name in the entire Premises during each hour of the Lease Term when Tenant is required to be open for business under §8.3, fully staffed, stocked, and fixtured.

For each day that Tenant fails to comply with this §8.2, Tenant shall pay 150% of the Minimum Annual Rent (prorated on a daily basis), such sum representing the parties' estimation of the damages that Landlord will suffer by Tenant's noncompliance.

§8.3. Conduct of Business - ~~Tenant shall conduct its business to maximize Gross Sales in the Premises.~~ Tenant shall open its store from 10:00 a.m. to 9:00 p.m. Monday through Friday, and from 10:00 a.m. to 6:00 p.m. on Saturday. A Tenant shall light the show windows of the Premises and all its signs each night of the year until 10:00 p.m.

Tenant shall be permitted to conduct its business in the Premises additional hours, provided Tenant first notifies Landlord in writing of such additional hours.

The arrangement, style, color and general appearance of all fixtures, advertising, and merchandise displays in the Premises are subject to Landlord's approval, both as to the manner of maintenance and as to the size, color, manner and existence of such materials. Tenant shall keep all such merchandise displays, fixtures, and advertising in first-class condition. \* See page 10-a

§8.4. Operation by Tenant - Tenant shall not place any merchandise, vending machines or other articles in any vestibule or entry of the Premises or outside the Premises; shall collect garbage, trash, rubbish and other refuse from in and about the Premises at least once a day (or more often if necessary), shall keep it in rat-proof containers inside the Premises, and shall remove it from the Premises to the dumpster serving the Premises at least once a week (or more often if necessary); shall not allow any sound system in the Premises to be audible outside the Premises; shall keep all mechanical equipment free of vibration and noise; shall not commit or permit any waste or nuisance in the Premises; shall not allow any coin-operated amusement devices, games or hand-lettered signs in the Premises; shall not permit delivery vehicles to load, unload, park or stand in any service drive or sidewalk; shall comply with all

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- \* Notwithstanding the foregoing, Landlord agrees to be reasonable in its approval of Tenant's fixtures, advertising and merchandise displays in the Premises, provided same: (i) are high quality and professionally produced, (ii) do not deviate from the aesthetics or moralistic values of the Center.



laws, recommendations, ordinances, rules, regulations and other requirements of governmental and quasi-governmental authorities and of insurers at the Center; shall not allow any noxious, toxic or corrosive substance in the Premises; shall not place any load on the floor that exceeds the load that floor was designed to carry; and shall not install any equipment that can exceed the capacity of any utility facilities.

~~§8.5. Competing Operations - Tenant agrees that any business within one mile of the Center that Tenant operates or manages, directly or indirectly (or in which it has any other interest) and that competes with Tenant's Business decreases Percentage Rent under this Lease (which is a major consideration for this Lease and the construction of the Center). Accordingly, Tenant shall include 50% of the sales of the other business in Gross Sales under this Lease. Landlord may inspect the Gross Sales records of the other business to the same extent as under §4.2, and Tenant shall furnish to Landlord reports of gross sales of the other business in the same manner as under §4.2.~~

~~not to, within one (1) mile of the Center, operate or manage, directly or indirectly (or have any other interest in) any business that competes with Tenant's Business.~~

§8.6. Dignified Use - Tenant shall not allow the Premises to be used for a public or private auction or any fire, "going out of business," bankruptcy, or similar sale, or for the sale, rental, or display of obscene material (such as nude photos, sexual devices, objects depicting any parts of the body which people do not normally expose to public view, and any similar items commonly associated with a peep show, massage parlor, adult book store, head shop, or similar business. In addition, Tenant shall not allow the Premises to be used in any other disreputable or immoral manner and shall allow them to be used only in a dignified and ethical manner consistent with the businesses in the rest of the Center.

~~§8.7. Merchants' Association - During the Lease Term, Tenant shall be a member of a merchants' association in which Landlord and other tenants in the Center are members. Tenant shall pay annual dues according to the rules of the association as set by Landlord. Tenant's failure to pay dues is a default under this Lease, but does not terminate its membership unless Landlord terminates the Lease. The failure of any other tenant to pay dues to or join this association does not affect Tenant's obligations under this Lease. Tenant shall advertise in at least 4 merchants' association advertising programs a year, which may include newspaper advertisements, tableds, and coupon books. In each program, Tenant shall take the same amount of space as allocated to the other members. Tenant also shall participate in all sales and promotions sponsored by the association. Tenant shall include the name of the Center and the address of the Premises in all advertisements, stationery or printed material in which Tenant mentions any of its locations. \* (See page 11-a)~~

~~§8.8. Center Promotions - If the Center has a grand opening, Tenant shall contribute \$1,000 to defray grand opening expenses.~~

§8.9. Signs, Advertising - Tenant shall not place anything on any exterior door or window of the Premises or on the inside of the Premises if visible from the outside, including signs, decals, advertising, and decorations, that does not comply with the Sign Criteria in Exhibit D or that reflects poorly on the Center or reflects poor taste, in Landlord's sole opinion. \*\* (See page 11-a)

§8.10. Environmental Compliance - As part of its obligation to comply with laws and other requirements under §8.4, Tenant shall comply with all federal, state, and local environmental laws and regulations, such as the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Superfund Law, and the Toxic Substances Control Act. Tenant shall send Landlord copies of any reports or other filings required by environmental laws and regulations. Tenant shall notify Landlord immediately if Tenant is notified of any potential violation of environmental laws and regulations at the Center. If Tenant becomes obligated under environmental laws and regulations to take any remedial action at the Center, Tenant may not take the action without obtaining Landlord's prior approval.

## §9. TENANT'S PROPERTY

§9.1. Alterations - Tenant shall not make any alterations, additions or other changes (including painting, decorating and installing signs) to the



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- \* **§ 8.7 Promotional Fund** - Landlord operates a Promotional Fund (the "Fund") for the purpose of advertising and promoting the Center. Tenant shall not become a member of the Fund, but agrees to contribute to the fund as provided herein. The Fund shall be used by Landlord to pay costs and expenses associated with the formulation and carrying out of an ongoing program for the promotion of the Center, which program may include, without limitation, special events, shows, displays, signs, marquees, decor, seasonal events, and print, television, radio and other media advertisements. In addition, the Landlord may use contributions to the Fund to defray the costs of administration of the Fund, not to exceed fifteen percent (15%) of all contributions to the Fund. Tenant shall pay annual dues to the Fund according to the rules of the Fund, as from time to time set by Landlord. Tenant's failure to pay dues is a default under this Lease. The failure of any other tenant to pay dues to the Fund does not affect Tenant's obligations under this Lease.
- \*\* On or before Tenant's execution of this Lease, Tenant shall submit to Landlord for approval Tenant's plans for exterior signage, prepared in conformance with Exhibit D. Tenant's exterior sign shall be installed by Tenant at its expense within thirty (30) days after the Rent Commencement Date. Failure to comply with this Section 8.9 shall, without the necessity of notice from Landlord, constitute a default under this Lease, and Landlord shall be permitted to exercise its remedies as set forth in Section 15.2 hereof.



Premises. Tenant shall promptly remove any alteration, addition, or other change made without Landlord's prior approval or take any other action as Landlord directs.

§9.2. Removal - During the Lease Term, Tenant may not remove its personal property (such as equipment and trade fixtures), unless Tenant replaces it with property at least as valuable, and may not remove any property attached to the Premises (such as leasehold improvements, alterations, and additions). At the end of the Lease Term, Tenant shall remove all improvements, alterations, and additions as required by Landlord and, unless Tenant is in default, Tenant also shall remove all of its personal property (such as equipment and trade fixtures). In each case, Tenant shall repair any damage connected with the removal. If Tenant may remove its personal property at the end of the Lease Term, but fails to, Landlord may either remove it (and repair the removal damage) at Tenant's expense or may allow it to remain in the Premises, in which event it becomes Landlord's property. If Tenant defaults, Landlord may take exclusive possession of Tenant's personal property in the Premises and may use it until all defaults are cured, or Landlord may require Tenant to remove its personal property immediately.

§9.3. Liens - Tenant shall not allow any lien to attach to the Center or the Premises. For any lien connected with Tenant that attaches or is threatened, Landlord may require Tenant to bond it off or to furnish other indemnity satisfactory to Landlord within 7 days after the attachment or threat. If Tenant fails to act as requested by Landlord, Landlord may take any necessary measures to protect it, and Tenant shall reimburse Landlord for its costs and expenses, plus a 15% administrative fee. 5

§9.4. Tenant's Taxes - Tenant shall pay when due all municipal, county, federal, or state taxes against its leasehold interest or its personal property at the Premises.

~~§9.5. Lien on Tenant's Assets - To secure the performance of Tenant's obligations under this Lease, Tenant grants to Landlord a security interest in all of Tenant's equipment, furniture, furnishings, appliances, goods, trade fixtures, inventory, chattels and personal property at the Premises, including after-acquired property, replacements and proceeds. Tenant shall sign any documents to evidence or perfect Landlord's security interest, such as financing statements or additional security agreements, and shall pay all costs and fees to file such documents. Landlord has all the rights and remedies of a secured party under the Uniform Commercial Code of the state where the Center is located. Landlord's security interest is subordinate to the lien or security interest of any vendor or lessor of goods or fixtures on the Premises and of any lender taking or succeeding to a purchase money security interest on such goods or fixtures. At Tenant's request, if no default exists under this Lease, Landlord shall sign an instrument affecting or confirming such subordination. The security interest and lien in this §9.5 are in addition to any landlord's lien provided by the law of the state in which the Center is located.~~

## §10. INSURANCE

### §10.1. By Landlord

§10.1.1. Property Insurance - Landlord shall carry all-risk type property insurance on a replacement cost basis (with any endorsements deemed advisable by Landlord, such as rental loss) that covers the Premises. Unless Landlord self-insures under §10.7, Landlord waives any right of recovery against Tenant and its agents and employees for a loss covered by the property insurance required under this section, whether or not Landlord actually carries the required insurance, and whether or not Landlord does anything to invalidate the coverage under the terms of the policy.

§10.1.2. Liability Insurance - Landlord shall carry broad form commercial general liability insurance on the Common Areas providing coverage of not less than \$1,000,000.00 per occurrence for bodily injury and property damage, combined single limit.



## §10.2. By Tenant

§10.2.1. Property Insurance - Tenant shall carry all-risk type property insurance on a replacement cost basis that covers the plate glass in the Premises, the leasehold improvements installed by Tenant as a part of Tenant's Work or installed as additions or alterations, and Tenant's personal property in the Premises, including its merchandise, trade fixtures, equipment, furnishings, such as wall covering, floor covering, carpeting, and drapes. Tenant shall also carry insurance that covers vandalism, malicious mischief, and actual and attempted robbery, burglary, and safe burglary and that covers business interruption and rental continuation. Tenant's property insurance must provide coverage beginning on the Possession Date. Tenant waives any right of recovery against Landlord and its agents and employees for a loss covered by the property insurance required under this section, whether or not Tenant actually carries the required insurance, and whether or not Tenant does anything to invalidate the coverage under the terms of the policy.

§10.2.2. Liability Insurance - Tenant shall carry broad form commercial general liability insurance on the Premises naming Landlord as an additional insured, providing coverage of not less than \$1,000,000.00 per occurrence for bodily injury and property damage, combined single limit, and including fire/legal liability coverage, and including contractual liability coverage that recognizes this Lease. ~~The limit of the liability policy does not limit or diminish Tenant's liability under this Lease.~~ Tenant may obtain a policy with a higher limit, and Landlord may increase the limit at any time it deems necessary for adequate protection.

Subject to the sovereign immunity of Montgomery County, Maryland, as Tenant, the

§10.3. Miscellaneous Insurance Requirements - ~~Tenant shall obtain Landlord's prior approval of Tenant's insurance companies and their policy forms.~~ Each of Tenant's policies must obligate the insurer to notify Landlord (with a copy of the notice to Landlord's Director of Risk Management) in writing at least 30 days before cancellation or modification of such insurance and must provide that the inclusion of additional insureds does not preclude the right of protection under the policy by the named insured for claims made against it by additional insureds where such claims would have been recoverable under the policy had the additional insureds not been covered by the policy. Tenant shall provide Landlord with copies of the policies or with certificates that evidence that such insurance is in full force and that state the terms of the policy. If Tenant fails to provide copies of the policies or certificates within 10 days after Landlord's request, or if Tenant fails to carry the required insurance, Landlord may obtain the insurance for Tenant, and Tenant shall pay the cost of the insurance, plus a 15% administrative fee, to Landlord on demand.

§10.4. Tenant's Waiver - ~~Except in the event of Landlord's negligence or its~~ Tenant waives any right to recover against Landlord, its agents, and employees, for damage to person or property, including consequential damages, and including damage connected with: (a) ~~Landlord's not maintaining any part of the Center;~~ (b) wind, water, or other natural element; (c) failure to supply any utility service and failure of any utility facilities or systems, including HVA/C, electric wiring, and plumbing; (d) broken glass; (e) blockage of sewer pipes or downspouts; (g) bursting, leaking or running over of any vessel or pipe, such as a toilet or waste pipe; (h) the escape of steam or hot water; (i) water, snow or ice; (j) the falling of any fixture, plaster or stucco; (k) damage, theft, or loss of property of Tenant or others by third parties; (l) the negligence of third parties, including Tenant's customers, other tenants in the Center, and occupants of nearby properties; ~~(m) and, if the damage is covered by insurance that Tenant is required to carry under this Lease or by any other insurance that Tenant carries, the negligence of Landlord;~~

intentional act,

§10.5. Policy Requirements - Tenant shall not allow anything to be done in or about the Premises that violates Landlord's insurance policies or prevents Landlord from obtaining a policy in amounts and with companies selected by Landlord. If Tenant allows anything to be done that increases the premium for Landlord's insurance, Tenant shall pay the amount of the increase to Landlord on demand, and Landlord may correct any such condition at Tenant's expense. If Tenant's Business includes food preparation or the use, sale or storage of flammable materials, Tenant shall install chemical extinguishing devices approved by the appropriate insurance rating organization and Landlord's property insurer and shall keep such devices under service as required by such organization. If gas is used in the Premises, Tenant shall install manual and automatic gas cut-off devices.



§10.6. Indemnification - Tenant shall indemnify Landlord against all liens, claims, damages, and losses (including court costs and reasonable attorneys' fees) connected with Tenant's control, use, or possession of the Premises or Tenant's operations in the Center, except those claims, damages or losses caused by the acts or omissions of Landlord its contractors, agents or employees. This indemnification is limited by

§10.7. Self-Insurance - Landlord may self-insure against any of the risks for which it would otherwise be required to carry insurance as long as Landlord (including any affiliates) has a net worth of at least \$50,000,000.

\* See page 14-a

the Maryland  
Local Govern-  
ment Tort  
Claims Act  
governing the  
Tenant,  
Montgomery  
County, Maryland.

## §11. ESTOPPEL CERTIFICATE, ATTORNMEN, SUBORDINATION

§11.1. Estoppel Certificate - Tenant shall sign and deliver to any person designated by Landlord recordable certificates that (a) ratify this Lease; (b) state the Possession and Rent Commencement Dates and the date the Lease Term expires; and (c) state that this Lease is in full force and has not been assigned or amended (except as stated); (d) state that all conditions under this Lease to be performed by Landlord have been satisfied (stating exceptions, if any); (e) state that neither Tenant nor Landlord is in default under this Lease or have failed to perform their obligations under this Lease (or stating the default or the failure); (f) state that no defenses or offsets against the enforcement of this Lease by Landlord exist (or, if any, stating those claimed); (g) state the advance rent, if any, paid by Tenant; (h) state the date to which rent has been paid; (i) state the amount of any security deposited with Landlord, and (j) contain such other information as Landlord reasonably requires. The certificate binds Tenant, and anyone who receives a certificate may rely on it.

§11.2. Attornment - If Landlord transfers any of its interest in any of this Lease or the Center (including assignment of this Lease to a mortgagee as security and any subsequent transfer by foreclosure sale), Tenant shall attorn to the transferee (or, in the case of conditional assignments, shall agree to attorn to the assignee if the condition occurs) and shall recognize the transferee as Landlord under this Lease. At Landlord's request, Tenant shall sign an attornment agreement in the form required by Landlord. If Landlord transfers its entire interest in this Lease, its liability under this Lease terminates on the date of the transfer, ~~(including liability for any Security Deposit transferred to the transferee Landlord)~~. Such transferee agrees to recognize Landlord's and Tenant's rights and obligations under this Lease. reasonable

§11.3. Subordination - This Lease is subject to all matters of record at the Lease Commencement Date and to any interests in the Center created during the Lease Term and is subject to any leases under which Landlord holds possession at the date of this Lease and at any other time during the Lease Term. Tenant may not violate the restrictions and conditions in any matter of record at the Lease Commencement Date. Unless requested otherwise by a lender as to its lien, this Lease is also subject to the liens connected with any method of financing, whether created before or during the Lease Term, against all or part of the Center, and to all renewals, modifications, replacements, consolidations and extensions of the liens. The subordination in this section is self-operative so that no other documents are necessary to subordinate Tenant's interest under this Lease. However, Tenant shall sign any document requested by Landlord, a lender, or other interest owner to further evidence the subordination, as permitted by law. reasonable

§11.4. Signing Deadline - Tenant shall sign and deliver documents under this §11 within 10 days after Tenant receives the documents.

## §12. ASSIGNMENT AND SUBLETTING

Tenant may not assign this Lease or sublet the Premises. Landlord's consent to any assignment or subletting does not constitute consent to any subsequent assignment or subletting. If this Lease is assigned or the Premises are sublet, Landlord may collect rent from the assignee or subtenant and apply it to the rent due under this Lease. No assignment or subletting without Landlord's consent and no collection of rent (a) waives Landlord's right to enforce this section, (b) constitutes Landlord's acceptance of the assignee or subtenant, or (c) releases Tenant from its obligations under this Lease. ~~Even if Landlord consents to an assignment, Tenant remains fully liable under this Lease after the assignment.~~

without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute subjective discretion.

LEASE AGREEMENT between GFS Realty, Inc., as Landlord AND Montgomery County, Maryland, t/a Montgomery County Liquor, as Tenant in Diamond Square Shopping Center

- \* Provided the Tenant is Montgomery County, Maryland, Tenant may be a self-insurer against losses otherwise covered by all-risk type property insurance pursuant to Section 10.2.1 of this Lease.



"Assign," "sublet," "assignment," and "subletting" mean any sale, assignment, mortgage, pledge and any other transfer of this Lease or any interest in this Lease; any sublet of all or any part of the Premises; any license, concession, and lease of departments in the Premises; any occupancy by anybody other than Tenant; and any change of control of Tenant (such as the appointment of an attorney-in-fact for Tenant, or the sale, issuance, or retirement of stock in a corporate Tenant or of partnership interests in a partnership Tenant or of beneficial interests in a trust Tenant).

\* (See page 15-a)

### §13. CASUALTY DAMAGE

§13.1. Rebuilding by Landlord - Except if this Lease is terminated under §13.3, if the Premises are damaged by casualty, Landlord shall promptly repair the damage to put the Premises in the same condition as before the casualty (excluding Tenant's leasehold improvements installed by Tenant as a part of Tenant's Work or installed as additions or alterations, and excluding Tenant's merchandise, trade fixtures, furnishings, and equipment). However, Landlord is not required to spend more for rebuilding the Premises than that part of the insurance proceeds received by Landlord that is attributable to the Premises, less that part of all expenses, costs, legal fees and court costs incurred by Landlord in connection with such award and that are attributable to that part of the award.

§13.2. Rebuilding by Tenant - Except if this Lease is terminated under §13.3, if any of Tenant's leasehold improvements installed by Tenant as a part of Tenant's Work or installed as additions or alterations, or any of Tenant's merchandise, trade fixtures, furnishings, and equipment are damaged by casualty, Tenant shall promptly replace it with items as nearly the same as reasonably possible within 30 days after Landlord substantially completes its rebuilding work. Tenant may close Tenant's Business during the rebuilding only with Landlord's approval, and if Tenant has so closed, it shall reopen for business by the 30th day after Landlord substantially completes its rebuilding work.

, or as soon as is reasonably possible,

§13.3. Landlord's Termination Right - If the Premises are damaged by casualty and the cost to restore the Premises exceeds 50% of the cost to rebuild the entire Premises, then Landlord may terminate this Lease effective as of the date of the casualty by notifying Tenant within 60 days after the casualty.

§13.4. Proportionate Rent Adjustment - If the Premises are damaged by casualty, Minimum Annual Rent, Base Sales, and other charges payable by Tenant adjust in proportion to the part of the Premises that Tenant cannot occupy because of the damage or the rebuilding work.

### §14. CONDEMNATION

§14.1. Definitions - "Condemnation" means a taking by exercise of the power of eminent domain and any conveyance in lieu of such a taking, whether permanent or temporary (if more than 6 months), by any public or quasi-public authority in appropriate proceedings, and includes any governmental action preventing or substantially restricting use of the Premises for permitted activities or of the Common Areas for access and parking for more than 6 consecutive months. The "date of condemnation" is the date the condemning authority takes possession of the condemned area.

§14.2. Extent/Termination - If 10% or more of the Premises is condemned, or 15% or more of the Center or of the parking spaces in the Common Areas is condemned, then Landlord may terminate this Lease by notice to Tenant within 90 days after the date of condemnation.

§14.3. Rebuilding - If less than 10% of the Premises or less than 15% of the Center or of the parking spaces in the Common Areas are condemned, or if Landlord does not terminate this Lease under §14.2, then Landlord shall promptly rebuild the Premises and the Center on the land remaining to a complete unit of a quality and character as close as practical to that which existed before the condemnation (excluding Tenant's merchandise, trade fixtures, furnishings, and equipment). Tenant shall promptly replace its merchandise, trade fixtures, furnishings, and equipment in the Premises within 30 days after Landlord

, or as soon as is reasonably possible,



LEASE AGREEMENT between GFS Realty, Inc., as Landlord AND Montgomery County, Maryland, t/a Montgomery County Liquor, as Tenant in Diamond Square Shopping Center

\* **Landlord's Share of Profit.** In the event of any sublease of all or any portion of the Premises, or assignment of all or any portion of the Premises, where the rent reserved in the sublet or assignment exceeds the rent or pro rata portion of the rent, as the case may be, for such space reserved in the Lease, or where Tenant receives a lump sum of money for the sublease or assignment of the leasehold, Tenant shall pay to Landlord monthly, as additional rent, at the same time as the monthly installments of Minimum Rent hereunder, one-half (½) of the excess of the rent reserved in the sublease or assignment over the rent reserved in this Lease applicable to the subleased or assigned space, or, in the event Tenant receives a lump sum payment of money for the assignment of the leasehold or sublease, Tenant shall pay to Landlord one-half (½) of such lump sum within five (5) days after Tenant's receipt of such sum.

**Assignment/Subletting.** Notwithstanding anything to the contrary contained in this Section 12, Tenant may assign this Lease or sublet the Premises for any of the then remaining portion of the unexpired Lease Term with Landlord's consent, which consent shall not be unreasonably withheld, to the purchaser of all or substantially all of Tenant's assets, provided, however, that: (i) the net worth of the assignee or sublessee immediately on the effective date of the assignment or subletting is adequate, in Landlord's reasonable judgment, to operate successfully Tenant's Business in the Premises; (ii) the business continues to be conducted in the same manner as conducted by Tenant and pursuant to all of the provisions of this Lease; (iii) such assignee or sublessee shall assume in writing all of Tenant's obligations hereunder; (iv) Tenant shall not be in default of any of the terms or provisions of this Lease; (v) such assignee or sublessee has sufficient business experience, in Landlord's opinion, to successfully operate Tenant's Business in the Premises, and (vi) notice of any such proposed assignment or subletting shall be given to Landlord at least thirty (30) days prior to its proposed effective date, and there shall be delivered to Landlord instruments, all in form and content acceptable to Landlord, evidencing (A) such assignment, (B) the satisfaction of all of the provisions contained herein, and (C) the agreement of such assignee to assume and be bound by all the terms, conditions and covenants of this Lease to be performed by Tenant.

Notwithstanding anything to the contrary set forth in this Section 12, and without limiting Landlord's rights as set forth in this Section 12, in the event Landlord consents in writing to an assignment of this Lease or other transfer of the entire interest of the original named Tenant herein in accordance with the terms and conditions set forth in the immediately preceding paragraph, the original named Tenant shall, in such event, be released from any further liability accruing after the effective date of any such assignment or transfer.



substantially completes its rebuilding work. Tenant also shall rebuild Tenant's Work within the same time period if that part of the condemnation award received by Landlord that is attributable to the Premises is not sufficient for Landlord to rebuild the Premises. Tenant may close Tenant's Business during the rebuilding only with Landlord's approval, and if Tenant has so closed, it shall reopen for business by the 30th day after Landlord substantially completes its rebuilding work. However, Landlord is not required to spend more on the rebuilding than that part of the condemnation award received by Landlord that is attributable to the area to be rebuilt, less that part of all expenses, costs, legal fees and court costs incurred by Landlord in connection with such award and that are attributable to that part of the award. , or as soon as is reasonably possible,

§14.4. Effect on Rent - If Landlord terminates this Lease under §14.2, rent abates as of the date of termination. Landlord shall refund to Tenant that part of any rent paid in advance for a period after the condemnation. If Landlord does not terminate this Lease under §14.2, Minimum Annual Rent, Base Sales, and other charges adjust to reflect the nature and extent of the condemnation of the Premises, both during the rebuilding and after the rebuilding has been completed.

§14.5. Award - Landlord may receive all of any award for the condemnation of the Premises or the Center, including any part of the award for the leasehold, reversion, and fee. However, Tenant may make a separate claim against the condemning authority for Tenant's cost to move its merchandise, furniture, fixtures, leasehold improvements and equipment.

## §15. TENANT'S DEFAULT

§15.1. Default Defined - Tenant "defaults" under this Lease if:

- a. Tenant fails to pay any rent or any other charges when due from Tenant under this Lease; except that for the first 2 late payments during the Lease Term, Tenant defaults only if it fails to make the payment within 10 days after the payment is due; or
- b. Tenant submits a report, statement, certificate, or other document to Landlord that is false or misleading, as determined by Landlord; or
- c. Tenant fails to conduct Tenant's Business in the Premises as required by §8; or
- d. possession of any of the Premises is held by any person other than as permitted under this Lease; or
- e. Tenant commences any proceeding for reorganization, adjustment, liquidation, dissolution, composition, or arrangement of it or its debts under any law providing relief for debtors, such as bankruptcy or insolvency, or assigns any of its assets for the benefit of creditors; or applies for the appointment of a receiver, guardian, conservator, trustee, or other similar officer to take charge of a substantial part of its business; or otherwise makes arrangements under any present or future law to provide a plan for it to settle, satisfy, or extend the time for the payment of its debts; or generally does not pay its debts as they become due or admits in writing its inability to pay its debts; or takes any corporate action to authorize any of the actions in this §15.1(e); or
- f. Tenant is adjudicated bankrupt or insolvent, and if the adjudication is not reversed within 60 days thereafter; or a receiver, guardian, conservator, trustee, or other similar officer is appointed to take charge of a substantial part of Tenant's business, and if the appointment is not voided within 60 days thereafter; or a proceeding for reorganization, adjustment, liquidation, dissolution, composition, or arrangement of it or its debts under any law providing relief for debtors, such as bankruptcy or insolvency, is commenced against Tenant, and if the proceeding is not dismissed within 60 days thereafter; or Tenant is required to otherwise make arrangements under any present or future law to provide a plan for it to settle, satisfy, or extend the time for the payment of its debts; or any execution or attachment is issued against Tenant, its interest in this Lease, or any of Tenant's property, and in connection with the execution or attachment the Premises may be taken or occupied or attempted



to be taken or occupied by someone other than Tenant, and if the execution or attachment is not voided within 60 days thereafter; or

g. any action occurs by or on behalf of, or against, or regarding the property or affairs of Tenant's guarantor (if any) of this Lease, that would constitute a default by Tenant if taken by, against or with respect to Tenant, its property or affairs; or

h. Tenant fails to perform or observe any of its other obligations under this Lease within 20 days after notice from Landlord to Tenant specifying the failure, or if the failure cannot be cured by due diligence within that day period, Tenant fails to commence curing within the 20 day period or to continue curing the failure with due diligence after that period.

**§15.2. Landlord's Remedies** - If Tenant defaults, Landlord may treat the default as a breach of this Lease, and in addition to any and all other rights or remedies of Landlord in this Lease or at law or in equity, Landlord may do any or all of the following, without further notice or demand to Tenant or any other person:

**§15.2.1. Termination** - Landlord may declare the Lease Term ended (even after it has relet the Premises without terminating this Lease) and may re-enter and retake possession of the Premises and remove all persons and property from the Premises. If Landlord terminates this Lease under this §15.2.1, Tenant shall pay to Landlord, in addition to any other amounts Tenant is obligated to pay to Landlord under this Lease:

a. any unpaid rent, including interest, that is due when this Lease is terminated; plus

b. that rent, including interest, that would have been earned after termination until the time of judgment; plus

~~c. the present value (using a discount rate of 5%) of the excess, if any, of the total rent and charges under this Lease for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Lease Term. The total rent payable by Tenant for each Lease Year after default equals the average Minimum Annual and Percentage Rents that Tenant was obligated to pay from the Rent Commencement Date to the time of default or during the 2 full Lease Years before default, whichever period is shorter; plus~~

d. any other amount necessary to compensate Landlord for its damages connected with Tenant's failure to perform its obligations under this Lease, such as costs to re-enter and retake possession of the Premises and remove all persons and property from the Premises, to alter, repair, and decorate the Premises, and reasonable attorneys' fees, brokerage commissions, advertising, and other reletting costs; plus

e. such other amounts, in addition to or in lieu of the foregoing, as may be permitted from time to time by applicable law.

Nothing in this Lease limits Landlord's right to recover as damages in any bankruptcy, insolvency, receivership, reorganization or arrangement proceeding the maximum allowed by the law then governing such proceedings, even if that amount is greater than the amount Landlord may recover under this Lease. In addition, if Tenant seeks protection from creditors under the Federal Bankruptcy Act, or if any petition is filed under that Act to adjudicate Tenant as bankrupt, Landlord is entitled to the rights under §365(b)(3) of the Act (as amended) regarding a lease of real property in a shopping center.

**§15.2.2. Rent Suit without Re-entry/Termination** - Landlord may sue to collect rent (as it accrues under this Lease) and damages (including reasonable attorneys' fees ~~and the cost to renovate the Premises~~) without retaking possession of the Premises or terminating this Lease.

**§15.2.3. Re-entry without Termination** - Landlord may re-enter and retake possession of the Premises from Tenant by summary proceedings or otherwise and remove Tenant and any other occupants from the Premises in such manner as Landlord deems advisable with ~~or without~~ legal process and using



self-help if necessary. Landlord also may remove from the Premises all or any of the personal property in the Premises and may place it in storage at a public warehouse at the expense and risk of the owner or owners thereof. "Re-enter" or "re-entry" as used in this Lease are not restricted to their technical meaning but are used in their broadest sense. Neither Landlord's commencement and prosecution of any action in unlawful detainer, ejectment or otherwise, nor Landlord's execution of any judgment or decree obtained in any action to recover possession of the Premises, nor any other re-entry and removal, terminates this Lease (even if the re-entry is done under summary proceedings or otherwise) or discharges Tenant from any obligation under this Lease. In any of such events, Tenant continues to be liable to pay rent and to perform all of its other obligations under this Lease, and Tenant shall pay to Landlord all monthly deficits in rent, after any such re-entry, in monthly installments as the amounts of such deficits from time to time are ascertained. If Landlord retakes possession, Landlord may relet parts or all of the Premises for terms greater or less than or equal to the unexpired part of the Lease Term on such terms and conditions and for such rent as the Landlord deems proper. Landlord shall apply the rent from such reletting (if and when received): first, to pay any indebtedness other than rent due under this Lease from Tenant to Landlord; second, to pay any cost to relet (including costs to alter, repair or decorate the Premises as Landlord deems advisable); third, to pay rent due and unpaid under this Lease; and the residue, if any, to be held by Landlord and applied to pay future rent as it becomes due. If the rent received from reletting, after being applied as required in this §15.2.3, is not enough to pay the rent under this Lease, then Tenant shall pay such deficiency to Landlord each month. Tenant has no right to any excess. Tenant also shall pay to Landlord, as soon as ascertained, any costs to relet, alter, and repair not covered by the rent received from reletting, including brokerage commissions and reasonable attorneys' fees. Nothing in this Lease obligates Landlord to relet all or any part of the Premises.

§15.3. Waiver of Rights of Redemption - To the extent permitted by law, Tenant waives all rights of redemption under any present or future laws.

§15.4. No Counterclaim - Tenant may not interpose any counterclaim in any proceedings Landlord brings against Tenant for its default under this Lease, but Tenant may assert such claims in a separate action brought by Tenant.

§15.5. Landlord's Right to Recover Fees & Expenses - If Tenant defaults under this Lease and Landlord files suit to enforce its rights, Tenant shall pay Landlord's costs and expenses connected with the suit (including reasonable attorneys' fees and court costs), even if Tenant pays rent after the suit is filed, but before judgment is rendered.

\* See page 18-a Landlord and

§15.6. Waiver of Trial by Jury - Tenant waives trial by jury in any action, proceeding or counterclaim brought by Landlord against Tenant in connection with this Lease or the Premises. one party the other

(followed by  
written  
notice)

§15.7. Cure Right - Without waiving any claim for damages, Landlord may cure Tenant's default at Tenant's expense (including a 15% administrative fee), and, in an emergency, Landlord may also cure a failure that has not ripened into a default after only oral notice has been attempted and an opportunity for Tenant to cure has been given as is reasonable under the applicable circumstances, based on Landlord's commercially reasonable opinion.

#### §16. DEFAULT BY LANDLORD

§16.1. Landlord's Defaults - Landlord defaults under this Lease if it fails to cure a breach of Tenant's covenant of quiet enjoyment (see §2.1) within 30 days (or such additional time as is reasonably required to correct any such default) after written notice to Landlord by Tenant, specifically describing such failure. Landlord's failure to maintain or to repair under §6.1 breaches Tenant's covenant of quiet enjoyment if the failure constitutes a constructive eviction.

\*\* See page 18-a

§16.2. Notice to Mortgagee - If the holder of a mortgage or other lien against the Center or this Lease gives written notice of its address to Tenant, Tenant shall send the holder a copy of any default notice given to Landlord. If Landlord defaults under this Lease, Tenant shall notify the holder in writing of the default, and the holder may (but is not obligated to) cure the default within a reasonable period before Tenant may exercise any of its rights by reason of Landlord's default.



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- \* **Prevailing Party.** Notwithstanding the foregoing, in the event of a claim for loss or damages under this Lease by Landlord or Tenant, the prevailing party in any such action shall be reimbursed by the losing party for all reasonable costs (including reasonable attorney's fees) in connection with any such action.
  
- \*\* **Landlord's Defaults.** Notwithstanding the foregoing, Landlord's, or its assign's, failure to do, observe, keep and perform any of the terms, covenants, agreements or provisions of this Lease required to be done, observed, kept or performed by Landlord, or its assigns, for a period greater than thirty (30) days after written notice by Tenant to Landlord of said failure (except if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter diligently pursues the cure to completion), shall be deemed a default by Landlord; and, Tenant may, with prior notice, pursue its rights and remedies provided at law or in equity or elsewhere herein. This paragraph set forth on this page 18-a shall apply only while the Tenant under this Lease is Montgomery County, Maryland.



## §17. MISCELLANEOUS

§17.1. Access by Landlord - Landlord and its agents may enter and examine the Premises at reasonable times, and may also enter the Premises to show them to prospective purchasers and other persons. During the last 6 months of the Lease Term, Landlord may maintain in and on the Premises notices deemed advisable by Landlord. Landlord and its agents may enter the Premises to maintain, repair, and replace as Landlord deems necessary. Rent does not abate during any entry, and nothing in this §17.1 obligates Landlord to maintain, repair, or replace. In addition, during any apparent emergency, Landlord and its agents may enter the Premises forcibly with no liability for the entry and without affecting Tenant's obligations under this Lease, except that, where possible, Landlord and its agents shall exercise care upon entering the Premises and during business hours

§17.2. Successors - The terms "Landlord" and "Tenant" include the parties' respective heirs, successors, administrators, executors, legal representatives, and assigns. However, no rights benefit any heirs, successor, administrator, executor, legal representative, or assignee of Tenant unless the assignment is approved in advance by Landlord. In addition, no person or entity that constitutes Landlord has any personal liability under this Lease, and Tenant may look only to Landlord's interest in the Center if Landlord defaults under this Lease (but Tenant may enjoin Landlord from violating this Lease). If Tenant is more than one person, Tenant is bound jointly and severally by this Lease. shall, if possible, secure the Premises upon the conclusion of the emergency.

§17.3. Waiver - Landlord and Tenant may waive rights under this Lease only in writing. However, where this Lease provides time periods within which a party must notify the other party to exercise a right of the notifying party, the notifying party's failure to provide the notice within the time period waives that right in that instance. Landlord does not waive a default if it accepts rent or if it fails to exercise any of its remedies for a default. A waiver by Landlord or Tenant does not implicitly waive any other right under this Lease, nor does it implicitly waive the same right for past or future situations.

§17.4. Accord and Satisfaction - Landlord may accept any payment from or on behalf of Tenant and apply it to any obligation of Tenant. Landlord's acceptance of the payment satisfies only the obligation to which Landlord has applied the payment and only to the extent the payment is sufficient to satisfy that obligation. Landlord's acceptance of the payment does not prejudice Landlord's right to recover any and all other amounts owed by Tenant under this Lease and Landlord's right to pursue any other available remedy. Landlord may disregard any endorsement or statement on any check or letter concerning the purpose of any payment, and no endorsement or statement on any check or letter constitutes an accord and satisfaction unless otherwise agreed to in writing by Landlord and Tenant.

§17.5. Entire Agreement; Changes in Writing - There are no representations, warranties, agreements, or conditions between Landlord and Tenant except as set forth in this Lease. No change to this Lease binds Landlord or Tenant unless in writing and signed by the party to be charged.

§17.6. No Partnership - Landlord is not Tenant's partner, employer, principal, master, agent or joint venturer by reason of this Lease.

§17.7. Force Majeure - Landlord <sup>and Tenant are</sup> is excused from performing any act required under this Lease while it is delayed for a reason beyond its control, such as a strike, lockout, labor trouble, labor, material, or equipment shortage, governmental or quasi-governmental law or regulation, power failure, adverse weather, fire, riot, insurrection, or war. Financial inability shall not be deemed a reason for delay beyond a party's control.

§17.8. Submission of Lease - Submission of this Lease to Tenant does not constitute an offer to lease. This Lease becomes effective only when Landlord signs it and delivers it to Tenant. By signing this Lease and delivering it to Landlord, Tenant grants Landlord an irrevocable option to accept this Lease by signing it and sending it to Tenant within 60 days after Landlord receives it.

§17.9. Notices - All notices, consents, approvals and other communications required or permitted under this Lease must be written (except for emergencies, where oral notice is sufficient, if followed immediately by written notice) and must be sent to Landlord at its Notice Address (Landlord's address on page 1 of this Lease), with a copy to Giant Food Inc. at the same address, attention Law



Department, Dept. #593; and to Tenant at its Notice Address (Tenant's address on page 1 of this Lease).

All notices must be sent to the other party's Notice Address either by private delivery service (such as a local courier or Federal Express) with provision for acknowledgment of receipt by the recipient, or by certified mail (return receipt requested), postage prepaid. Notices sent as required by this Lease that are delivered to the other party's Notice Address during normal business hours are effective when delivered even though the other party fails to acknowledge receipt. Either party may notify the other of a new Notice Address at any time. Tenant shall send a copy of any notice of Landlord's default to any mortgagee under §16.2.

§17.10. Section Titles - This Lease must be construed without reference to section titles, which are inserted only for convenient reference.

§17.11. Number and Gender - The masculine, feminine, or neuter gender in this Lease means the correct gender applicable, and the singular includes the plural, and conversely, as the context requires.

§17.12. Broker's Commission - Each party represents that it has not dealt with any broker on this Lease. Each party shall indemnify the other against any losses, claims, and damages (including brokerage claims and reasonable attorneys' fees) arising from the falsity of its representation.

§17.13. Partial Invalidity - If any provision of this Lease or its application to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the provision's application to other persons or other circumstances, is not affected. Landlord and Tenant intend each provision of this Lease to be valid and enforceable to the fullest extent permitted by law.

§17.14. Recording - Tenant may not record this Lease or any memorandum or short form of this Lease in the public records. At Landlord's request, Tenant shall sign a recordable short form or memorandum of lease containing the terms required by statute and any other terms that Landlord wants to include, which Landlord may record at Landlord's expense.

§17.15. Applicable Law - Landlord and Tenant intend that this Lease be construed under the laws of the state in which the Premises are situated.

§17.16. Not Construed Against Drafter - Both parties have had full opportunity to negotiate the terms of this Lease, and neither party intends that this Lease be construed for or against either party because of that party's role in drafting this Lease.

§17.17. Mortgagee's Approval - If any lender requires changes to this Lease as a condition of making a loan for the Center, and if Tenant does not agree to the changes within 30 days after Landlord's request, then Landlord may terminate this Lease. However, Landlord may not terminate this Lease if Tenant does not agree to changes to the rent, to other charges, or to the term of this Lease. If this Lease is terminated under this §17.17, neither party has any further obligation to the other under this Lease nor has any liability to the other for the termination of the Lease.

§17.18. Include, Shall, May - "Include," "includes," and "including" mean considered as part of a larger group, and not limited to the items recited. "Shall" means "is obligated to"; "may" means "is permitted to, but is not obligated to."

~~§17.19. Attorney in Fact - By its failure to sign documents or do other things required of Tenant under this Lease, Tenant irrevocably appoints Landlord as its duly authorized agent and attorney in fact (which is coupled with Landlord's interest in the Premises under this Lease) to sign the documents and do the things on Tenant's behalf.~~

§17.20. Survival - All of Tenant's obligations under this Lease that have accrued, but have not been performed, survive the end of the Lease Term (or, an assignment of Tenant's interest, in the case of a Tenant assigning its interest and being released from liability with Landlord's approval), ~~including the security interest created by this Lease~~ if this Lease terminates in connection with



Tenant's default. In addition, Tenant's obligation to indemnify Landlord under §10.6 survives the end of the Lease Term (or, an assignment of Tenant's interest) for Tenant's failure to comply with environmental laws and regulations under §8.10, even though Tenant's obligation to indemnify may not have accrued at the end of the Lease Term (or, at the assignment of Tenant's interest).

~~§17.21. Corporate Resolutions; Attorney's Opinion - If Tenant is a corporation, it shall furnish to Landlord (when it signs this Lease) certified copies of a resolution of its Board of Directors authorizing Tenant to enter into this Lease in the form of the Tenant's Resolutions attached as Exhibit F. If Tenant's guarantor is a corporation, Tenant shall furnish to Landlord (when it signs this Lease) certified copies of a resolution of its guarantor's Board of Directors authorizing the guarantor to guarantee Tenant's obligations under this Lease in the form of the Guarantor's Resolutions attached as Exhibit F. Tenant also shall furnish to Landlord an opinion of counsel regarding Tenant's and its guarantor's corporate standing and their signing of this Lease and the Guaranty, respectively (in the form of the Attorney's Opinion attached as Exhibit F).~~

§17.22. Cost of Performance - Except as provided otherwise in this Lease, the party obligated to perform an obligation is also obligated, as between Tenant and Landlord, to pay the cost of performance.

§17.23. No Implications - References in this Lease to any or all other parts of this Lease, such as "as provided otherwise in this Lease," or "as permitted by this Lease," or "as required in this §15.2.3," refer to the express terms of that part or of the entire Lease, and neither party intends to refer to any implied terms.

§17.24. Time of the Essence - Time is of the essence as to all matters in this Lease.

\* See page 21-a

Executed as of the date first written above.

LANDLORD:

GFS REALTY, INC.

ATTEST:

By: [Signature]  
Name: Michael C. Buchsbaum  
Title: Asst. Secretary

APPROVED BY  
BSAI  
FOR GFS  
SIGNATURE

By: [Signature] (SEAL)  
Name: Roger K. Wright  
Title: Vice President

A. Corporate Tenant

TENANT: MONTGOMERY COUNTY, MARYLAND

ATTEST:

By: [Signature]  
Name: Rebecca S. Domaruk  
Title: EAB Secretary

By: [Signature] (SEAL)  
Name: William H. Horney, Jr.  
Title: ACAO President

APPROVED AS TO FORM AND LEGALITY

Office of the County Attorney

RECOMMENDED:

By: [Signature]  
Assistant County Attorney

By: [Signature]

LEASE AGREEMENT between GFS Realty, Inc., as Landlord AND Montgomery County, Maryland, t/a Montgomery County Liquor, as Tenant in Diamond Square Shopping Center

\* **§17.25. Landlord's Consent.** If, at any time during the Term of this Lease or any extension or renewal hereof, Tenant requests from Landlord: (i) Landlord's consent to a proposed name change; (ii) Landlord's consent to a modification of Tenant's signage; (iii) subordination of Landlord's rights to a lien on, or lease of, Tenant's trade fixtures; (iv) Landlord's consent to an assignment of this Lease or subletting of the Premises; or (v) any other compliance or consent which is separate from the initial leasing of the Premises, then, in any of such events, Tenant shall pay to Landlord as additional rent, within seven (7) days from the date of an invoice sent to Tenant, any and all reasonable costs (including attorneys' fees) incurred by Landlord with respect to any such request by Tenant. The foregoing shall not constitute consent by Landlord to any of such requests.

**§18. General Conditions.**

**§18.1. Non-Discrimination.** Landlord and Tenant agree to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-3 and Section 27-19 of the Montgomery County Code 1994, as amended, as well as all applicable state and federal laws and regulations regarding employment discrimination. Landlord and Tenant agree that they do not and will not discriminate in any manner on the basis of age, color, race, religion, belief, sexual preference or disability.

**§18.2. Public Employment.** Landlord understands that unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County code, 1994, it is unlawful for any person transacting business with Montgomery County, Maryland to employ a public employee for employment contemporaneously with his or her public employment.

**§18.3. Applicable Law.** The terms of the Lease shall be interpreted under the laws of the State of Maryland. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such terms shall not be affected thereby.

**§18.4. Non-Appropriations.** This Lease is subject to the appropriation of funds. If funds are not appropriated, for any reason whatsoever, this Lease will terminate on July 1 of such year. Tenant shall give Landlord at least forty-five (45) days prior written notice of lack of appropriation. This Section 18.4 shall apply only so long as the Tenant is Montgomery County, Maryland.



FIRSTFIELD ROAD

A-1

A-3

A-5

A-6

GIANT FOOD  
AND  
DISCOUNT DRUG

B-1

B-2

B-3

B-4

B-5

B-6

B-7

B-8

B-9

B-10

B-11

BANK

FUTURE DEVELOPMENT

BUREAU DRIVE

OFFICE PARK

WEST DIAMOND AVENUE

# DIAMOND SQUARE SHOPPING CENTER

EXHIBIT: A  
TENANT: Montgomery County Maryland  
Department of Liquor Control  
ADDRESS: 18 Bureau Drive  
SIZE: 3,200 - sq. ft.

This site layout is for presentation purposes only and may not reflect actual tenant space, building dimensions, or parking design.



**EXHIBIT C**  
**RULES AND REGULATIONS**

1. Tenant shall comply with all laws and regulations of governmental authorities.
2. Tenant shall keep garbage and other refuse in rat-proof containers inside the Premises not visible to the general public expense and shall regularly remove it from the Premises through the proper service corridors. Tenant shall not burn trash, refuse or waste materials.
3. Tenant shall load and unload goods only in designated areas and shall promptly remove from the loading dock all goods placed there. Tenant is responsible for its goods during removal.
4. Tenant shall have in the Premises only merchandise which Tenant intends to sell at retail in the Premises.
5. Tenant shall not permit any waste or nuisance in the Premises.
6. Tenant shall not permit any sound system or advertising medium which can be experienced outside of the Premises, including flashing lights, searchlights, loudspeakers, phonographs, radios or televisions; and Tenant shall not permit any odors to be emitted or discharged outside the Premises.
7. Tenant shall not place merchandise, vending machines or other articles in any vestibule or entry of the Premises or outside the Premises.
8. Tenant shall not bring or keep on the Premises any flammable, combustible or explosive fluid, chemical or other substance, except as used in connection with Tenant's Business and permitted by applicable law;
9. Tenant shall not keep in the Premises any animals, birds, or reptiles.
10. Tenant shall not permit any coin-operated amusement devices and games in the Premises.
11. Tenant shall not permit any noxious, toxic or corrosive substance, except as used in connection with Tenant's Business and permitted by applicable law;
12. Tenant shall not place a load on any floor in the Shopping Center which exceeds the floor load per square foot which that floor was designed to carry.
13. Tenant shall not damage or deface any sign, light, landscaping, or other improvements in the Shopping Center, or the property of customers or employees in the Shopping Center.
14. Tenant shall not conduct any public or private auction or fire sale, going out of business sale, bankruptcy sale, or similar sale at the Premises.
15. Except in connection with activities of the Promotional Association and with Landlord's prior written consent, Tenant shall not:
  - (a) peddle or solicit orders for goods or services outside the Premises.
  - (b) distribute any circular, booklet, handbill, placard or other material, nor solicit membership in any organization, group or association or contribution for any purpose outside the Premises.
  - (c) use any Common Areas (including the enclosed mall) for any purpose when the other retail establishments in the Shopping Center are closed.
16. Tenant is responsible for protecting the Premises and Tenant's property from theft and robbery, and shall keep all doors, windows and transoms securely fastened when Tenant is not open for business.
17. If Tenant prepares food in the Premises, it shall install chemical extinguishing devices approved by the appropriate insurance rating organization and by Landlord's property insurer and shall keep such devices under service as required by such organization. If gas is used in the Premises, Tenant shall install manual and automatic gas cut-off devices.



December 21, 1977

EXHIBIT D

DIAMOND SQUARE SHOPPING CENTER  
CITY OF GAITHERSBURG, MARYLAND  
SIGN SPECIFICATIONS

The following sign specification must be strictly adhered to. No substitutions will be allowed unless approved by Landlord in writing.

1. SHOP DRAWINGS - Four (4) copies of all signing must be submitted by the tenant to the Landlord for review and approval prior to fabrication and installation. Method of securing sign to building must be approved. All fabrication and installation details must be provided as per sign spec Drawings 1, 2, and 3 of 3.
2. All signs are to be U.L. designed and approved and in accordance with all applicable codes. Attach label adjacent to the sign permit.
3. FACADE SIGN - The sign face is to be #2418 P-95 brown with graphics cut from face and backed with #2146 ivory as manufactured by Rohm & Haas. All face seams are to be backed up to eliminate light leaks.

Background - 2418 P-95 Brown  
Graphics - 2146 Ivory

4. SIGN BOX - To be constructed of aluminum .040" thick with baffles as indicated on drawing. Sign box and face retainer moldings are to be primed and finished with two coats of Benjamin Moore Tudor Brown 114-62. Interior of the sign box is to be painted white. Sign face retainer moldings are to be held in place with aluminum screws touched up to match box color. The sign box is to be 1" less in width than the store front. Actual width of sign to be verified by field check. A field check is to be conducted under the supervision of the owner's job superintendent. Refer to Drawing 3 for design length of sign and Drawings 1 and 2 for construction details. All details must be included in shop drawings.
5. ILLUMINATION - Two rows of high output T-12 cool white fluorescent lamps are to be located and spaced so as to eliminate hot spots and/or shadows in sign face. All components are to be U.L. approved. The safety switch is to be located at the bottom right end of each sign box. Permit numbers are to be located at the bottom right end of each sign box.
6. ELECTRIC - The Landlord is to provide one 20 amp, 120 volt, circuit to each sign box. Time clock is to be provided by tenant.
7. SIGN PERMIT - Two (2) copies must be forwarded to the Landlord upon being issued.
8. WINDOW SIGNS - Signs permanently affixed to windows, whether inside or outside, must be approved by the Landlord prior to installation.
9. SIGN CONSTRUCTION DETAILS - Refer to sign construction drawings for details. No deviation from these details will be accepted.



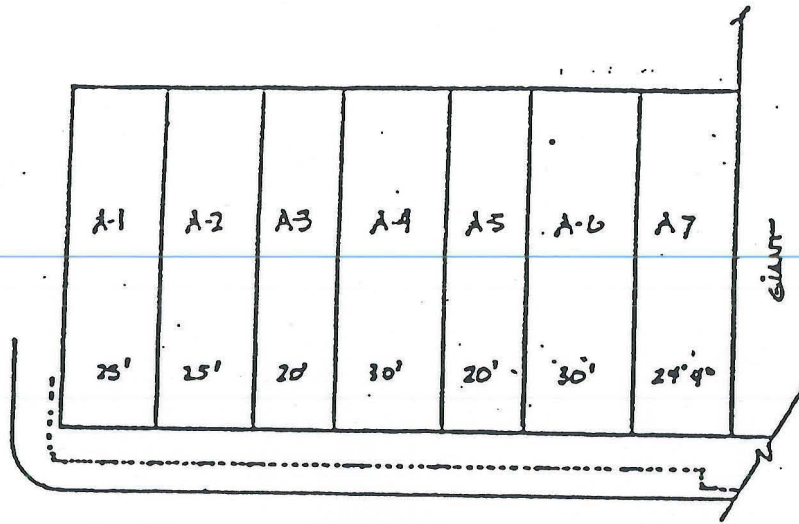
## DIAMOND SQUARE SHOPPING CENTER

### SIGN SPECIFICATIONS

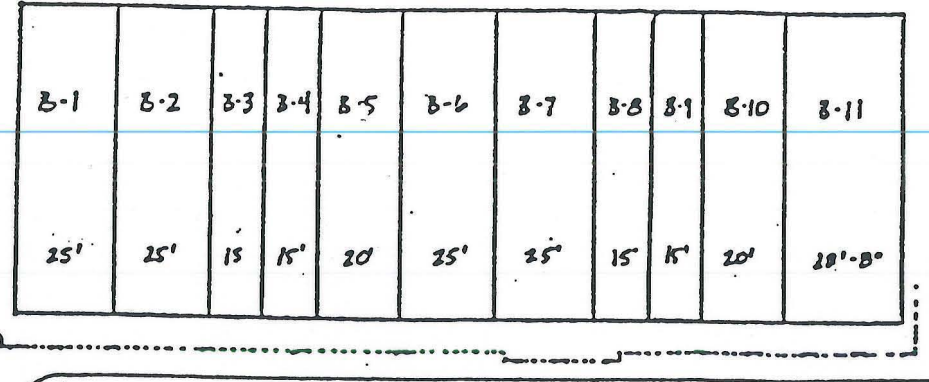
There is a problem in obtaining the matte finish (P-95) dark brown #2418 plastic for the sign faces. I have checked this out and the Rohm & Haas plexiglas manufacturing company is in the process of phasing out this product. Our solution to this problem is to advise you to use the gloss finish plastic and spray a clear polyurethane material on the finish of the sign face. The spray to be used is Spraylac manufactured by Gripflex. This material is available at N. Glantz & Son, 779-0111, or the Southern Sign Supply in Baltimore, 768-8600.

8/30/78





STORE NO.	SIGN BOX LENGTH
A1	28'-7"
A2	27'-11"
A3	19'-3"
A4	29'-11"
A5	19'-11"
A6	29'-11"
A7	19'-7"



STORE NO.	SIGN BOX LENGTH
B1	29'-11"
B2	23'-3"
B3	14'-11"
B4	14'-11"
B5	19'-11"
B6	25'-4 3/4"
B7	29'-3"
B8	10'-17 1/2"
B9	14'-11"
B10	19'-11"
B11	28'-7"

NOTE: 1. SIGN BOX LENGTH INCLUDES 1" SPACE BETWEEN SIGNS  
2. LENGTHS OF SIGN BOXES SHOWN MUST BE FIELD CHECKED.



1. CHANGES PAINT  
COLOR TO F-95  
2. 2200, BALLAST  
12-21-77 R.D.F.

2418 P. 95 BROWN PLASTIC FACE

CUT OUT LETTERS 2146 WORY

# TENNANT

2418 P. 95 BROWN PLASTIC FACE

SIGN PERMIT PLUG  
SEE ALTERNATE  
DETAIL "F" (NO GUTTER)

FRONT ELEVATION

LEAVE  
1/4" SPACE

4 DOWNRES  
FOR BALLAST  
AREA

2 1/2 x 1 1/2 x 3/4"  
4-0" O.C.

3/8 DIA. BOLTS  
ALUM.  
(2 PER 0")  
AS SHOWN

3/4 x 1 1/4 x 4"  
ALUM CHANNEL  
ATTACHMENT  
6-0" CENTERS  
(2 REQ'D)  
WELDED TO  
SIGN BACK  
PANEL

1/2" PLATED  
STEERING

1/2" PLATED  
COVERING

3/4" AIR SPACE

BALLAST LOCATION  
W/ALUM. PANEL

2-6"

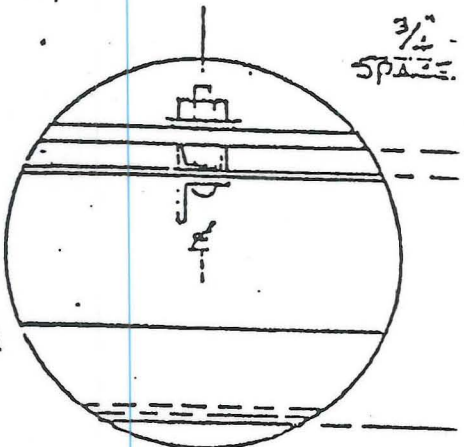
DETAIL "D"

4 1/2" LOWRE UNIT IN BAFFLE  
4-0" IN BOTTOM 5-0" O.C.

METAL GUTTER

DETAIL "C"

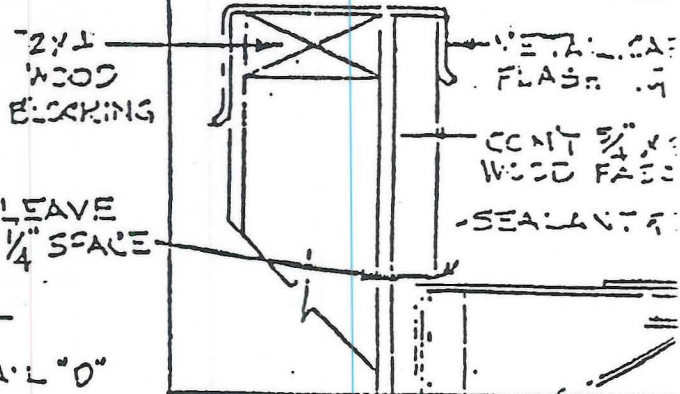
CHANNEL  
DETAIL "E"  
(TOP VIEW)



NOTE: FACE HANGS VIA 1" C  
PLASTIC BLOCKS WELDED TO  
FACE IN CHANNEL PROVIDED & SHOWN

2146 WORY BLACK LETTERS  
WELDED TO 2418 F10 BROWN EG

ALL EXPOSED METAL 240" ALUM.  
FIN. SHED TO MATCH BACK 2418 F10 BROWN.



2x4  
WOOD  
BLOCKING

LEAVE  
1/4" SPACE

METAL CASING  
FLASH

CONT 3/4" X 3/4"

WOOD FACE

SEALANT



TYPICAL SIGN SECTION DETAIL

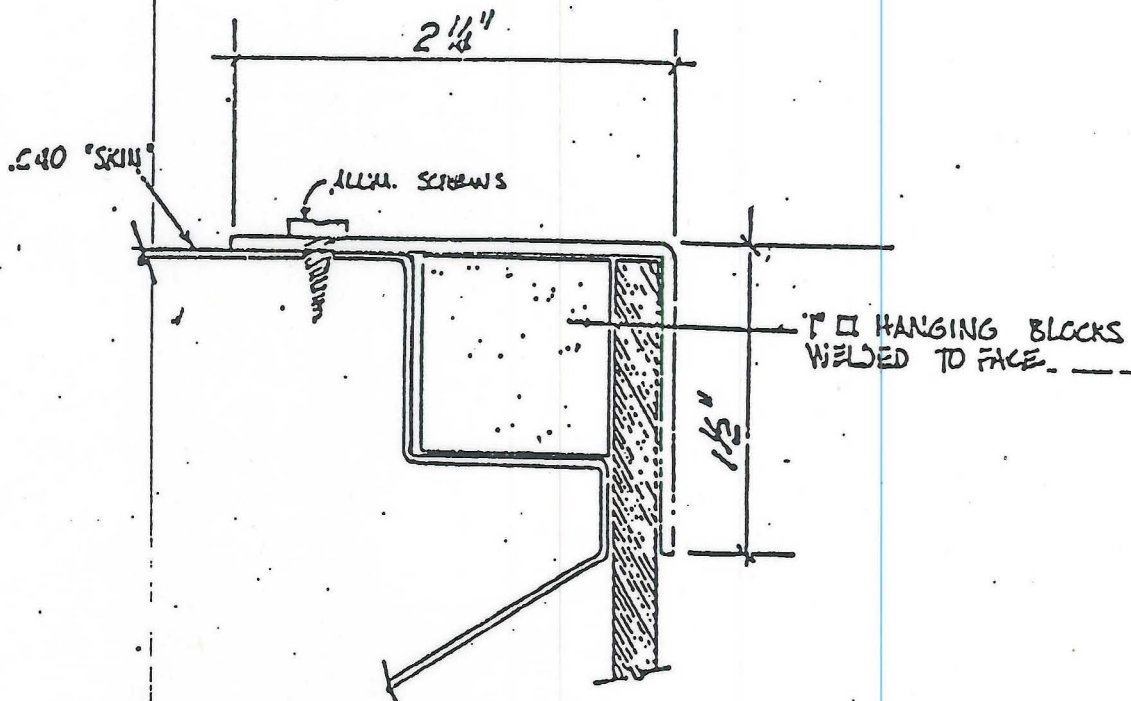
DWG.

SCALE 3/4" = 1'-0" DATE 3/1/77 REVISED 12-21-77 DWG. BY 201

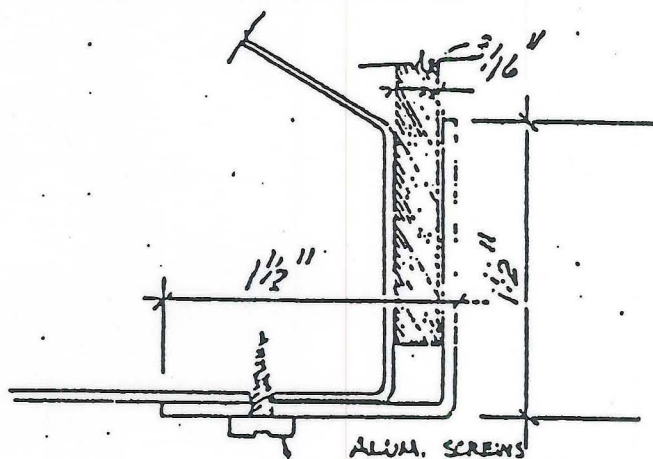
GIANT FOOD INC. STORE PLANNING DIVISION  
P.O. BOX 1804, WASHINGTON, D.C. 20013

301-341-1





DETAIL 'C' FULL SIZE



DETAIL 'D' FULL SIZE

REVISION 'A'

1. CHANGED FULL SIZE OF ANGLE  
12-23-77 R.D.F.



DETAIL 'C' & 'D' - DIAMOND SQUARE SIGN SPECIFICATIONS

SCALE FULL SIZE DATE 6-20-77 REVISED 12-23-77 DWG. BY

GIANT FOOD INC. STORE PLANNING DIVISION  
P.O. BOX 1904, WASHINGTON, D.C. 20013

DWG  
3

PI

301-341-



**EXHIBIT E**

**DECLARATION OF OCCUPANCY**

DATE OF DECLARATION: \_\_\_\_\_, 200\_\_

DATE OF LEASE: \_\_\_\_\_, 200\_\_

LANDLORD: GFS Realty, Inc. (Dept. # 671)  
P.O. Box 1804  
Washington, D.C. 20013

TENANT: Montgomery County, Maryland  
t/a Montgomery County Liquor  
16650 Crabbs Branch Way  
Rockville, Maryland 20855

CENTER: Diamond Square Shopping Center  
18 Bureau Drive  
Gaithersburg, Maryland 20878

Under §3.6 of the Lease, Landlord and Tenant agreed to sign this Declaration of Occupancy. Accordingly, Landlord and Tenant declare that:

1. The Possession Date under the Lease is \_\_\_\_\_, 200\_\_.
2. The Rent Commencement Date under the Lease is \_\_\_\_\_, 200\_\_.
3. Not counting Options to Extend, if any, the Lease Term expires on \_\_\_\_\_.

4. Landlord's Work (as defined in the Lease) has been satisfactorily completed by Landlord and accepted by Tenant.

5. As of the date of this Declaration, Tenant has no claims, defenses, or rights of set-off against rent and additional rent due under the Lease.

6. The Lease is now in full force and effect.

ATTEST:

\_\_\_\_\_  
Michael C. Buchsbaum  
~~Assistant~~ Secretary

A. Corporate Tenant

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
Office of the County Attorney

By: \_\_\_\_\_

LANDLORD: GFS REALTY, INC.

\_\_\_\_\_  
Roger K. Wright  
Vice President  
(SEAL)

TENANT: MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

RECOMMENDED:

By: \_\_\_\_\_